

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re: Ceola L. Walters-Wright
Debtor.

Case No.: 2014-29980-GMH-13
Chapter 13

Ceola L. Walters-Wright,
Plaintiff.

Adv. Proc. No.: 2014-

v.

Deutsche Bank National Trust Company, as certificate Trustee on Behalf of Bosco Credit II
Trust Series 2010-1,
Defendant.

COMPLAINT TO DETERMINE DEUTSCHE BANK NATIONAL TRUST COMPANY, AS
CERTIFICATE TRUSTEE ON BEHALF OF BOSCO CREDIT II TRUST SERIES 2010-1'S
CLAIM TO BE UNSECURED PURSUANT TO BANKRUPTCY CODE SECTION
506(a) AND ITS LIEN SUBJECT TO FUTURE SATISFACTION PURSUANT TO 1322(b)(2)

Plaintiff, Ceola Walters-Wright, ("Mrs. Walters-Wright"), through her Attorneys, Paula R. Brunner and Miller and Miller Law, LLC (collectively "Counsel") complain of Defendant, Deutsche Bank National Trust Company, as certificate Trustee on Behalf of Bosco Credit II Trust Series 2010-1, ("Defendant" "Deutsche Bank National Trust Company") and file this action to determine Deutsche Bank National Trust Company's claim to be unsecured pursuant to Bankruptcy Code section 506(a) and it's lien subject to future satisfaction pursuant to 1322(b)(2). Plaintiff alleges to the best of her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the following:

INTRODUCTIONS

Nature of the Action

1. This lawsuit arises from Defendant holding a purported lien despite the fact that there is no equity to which the lien may attach.
2. Causes of action herein are brought against Defendant under the United States Bankruptcy Code ("Bankruptcy Code"), 11 U.S.C. § 506(a), to determine Creditors claim to be unsecured and its lien subject to future satisfaction pursuant to 1322(b)(2).

Jurisdiction and Venue

3. Pursuant to Bankruptcy Rule 7008 this adversary proceeding relates to In re: Ceola L. Walters-Wright, a Chapter 13 case, filed on August 6, 2014, in the Bankruptcy Court of the Eastern District of Wisconsin. The related case number is 2014-29980-GMH-13.
4. This is an action pursuant to 11 U.S.C. § 506(a) for determination that Defendant's claim is unsecured and 11 U.S.C. § 1322(b)(2) for determination of the status of Defendant's lien. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1334, and this is a core proceeding.
5. Bankruptcy Rules 7001(2) requires an action of this nature to be filed as an adversary proceeding.

Parties

6. Mrs. Walters-Wright is an individuals who currently resides at 7908 W. Gertrude Drive, Milwaukee, Wisconsin 53218.
7. Defendant is a trust company with a principal mailing address of 60 Wall Street, 40th Floor, New York, NY 10005-2836.

Factual Allegations

8. Mrs. Walters-Wright owns a home located at 7908 W. Gertrude Drive, Milwaukee, Wisconsin 53218. (the "subject property")
9. Mr. Walters-Wright values her property on Schedule A of the bankruptcy schedules at \$58,000.00.
10. On July 26, 2014, Plaintiff had Patrick E. Eubanks of Eubanks Group Appraisal Services value the subject property.
11. The fair market value of the subject property is \$58,000.00 according to Mr. Eubanks. (See Exhibit A, page 6)
12. Plaintiffs have a first mortgage encumbering their homestead with Deutsche Bank National Trust Company, as Trustee for GSAMP Trust 2006-HEI, Pooling and Servicing agreement dated January 1, 2006. This mortgage is serviced by Ocwen Loan Servicing. The recorded mortgage and all assignments are attached as Exhibit B. The approximate payoff balance on that mortgage closest to the date of filing was \$78,765.88. A copy of the mortgage statement dated June 17, 2014 is attached hereto and labeled as Exhibit C.

13. Defendant holds a second mortgage of record that is junior to the first mortgage. A copy of the second recorded mortgage and all assignments held by Deutsche Bank National Trust Company, as certificate Trustee on Behalf of Bosco Credit II Trust Series 2010-1 is attached as Exhibit D.
14. The approximate payoff balance on Defendant's mortgage as of the date of filing was \$20,528.25. A copy of the recently filed proof of claim by servicer, Franklin Credit Management is attached here to and labeled as Exhibit E.

**FIRST CAUSE OF ACTION: DETERMINATION OF DEFENDANT'S CLAIM AS
UNSECURED**

15. Mrs. Walters-Wright restates all above allegations.
16. Pursuant to 506(a)(1), "an allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, ... and is an unsecured claim to the extent that the value of such creditors interest ... is less than the amount of such allowed claim."
17. As of August 6, 2014, the date of filing, the Defendant's mortgage, which was in the original amount of \$24,800.00 (see Exhibit D) does not attach to any equity in the plaintiff's property; therefore, pursuant to 11 U.S.C. § 506(a), the claim is wholly unsecured since there is no equity to which the lien may attach.

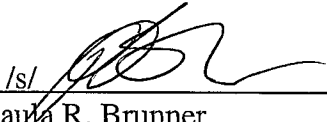
**SECOND CAUSE OF ACTION: DETERMINATION OF THE STATUS OF
DEFENDANT'S LIEN**

18. Mrs. Walters-Wright restates all above allegations.
19. Pursuant to 1322(b)(2), "the Chapter 13 plan may modify the rights of holders of claims such as subjecting a lien to future satisfaction..."
20. The anti-modification protection afforded by 11 U.S.C. § 1322(b)(2) applies only when the creditor's claim is at least partially secured. Here, the Defendant's claim is wholly unsecured and, as such, can be subject to future satisfaction pursuant to 11 U.S.C. § 1322(b)(2).

WHEREFORE, Mrs. Walters-Wright respectfully requests that this Court find and order:

1. that Defendant's claim shall be declared unsecured, pursuant to 11 U.S.C. § 506(a)
2. that Defendant's lien is subject to future satisfaction pursuant to 11 U.S.C. § 1322(b)(2),
3. And for such other relief as this Court may deem just and proper.

Respectfully submitted this 28th day of October, 2014.

/s/ 

Paula R. Brunner
State Bar No.: 1052159
MILLER & MILLER LAW, LLC
735 W. Wisconsin Avenue, Suite 600
Milwaukee, Wisconsin 53233
(414) 277-7742

MILLER & MILLER LAW, LLC
735 W. Wisconsin Avenue
Suite 600
Milwaukee, WI 53233
414-277-7742